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SUBJECT: DOMINICAN POLITICS #30: BIG PICTURE CONSTITUTIONAL

REFORM

11. (SBU) This is #30 in our series of political reports on
Leonel Fernandez's first year in office.

BIG PICTURE CONSTITUTIONAL REFORM

Dominican Senate President Andres Bautista convened a
conference on June 15 on "Constitutional Reform" with invited
experts from 8 Latin American countries. He was seeking to
give momentum to an effort to examine the "big picture" of
constitutional reform, stalled since 2001 when a study was
delivered by a commission headed by Msgr Agripino Nunez,
rector of the Catholic PUCMM university. Congress has
changed the Constitution 37 times, almost always responding to
political exigencies of the moment -- as in the 1996
amendment that barred presidential succession, blocking
Balaguer, and the 2002 amendment that reversed the decision,
permitting Hipolito Mejia to make an ultimately unsuccessful
re-election effort. Sessions to amend the constitution are
voted by a simple majority of the Congress and convened 15
days later; changes to the text are enacted by Congress, by
2/3 vote of those present, with a minimum quorum of half of
the membership.

The day before the ceremonial opening, during a meeting with
the President and the U.S. ambassador at the presidential
palace, Bautista and House of Representatives President
Alfredo Pacheco had invited Fernandez to speak at the
opening in the Senate chamber. The event was televised.
Other speakers generally droned through their written texts
-- for example, House President Pacheco summarized the 37
changes made since the Dominican constitution was established
in 1844. Bautista explained the intentions of the meetings,
greeted invited scholars and practitioners and thanked
mediator Msgr Nunez for his commission's work.
The President's Suggested Themes

As the final orator, Fernandez reminded his audience he had
been invited only the previous day -- but the scope,
precision and passion of his extemporized twenty-minute
speech outshone any of the other participants. Among his key
comments:

-- Though the Constitution provides that laws and
regulations counter to the Constitution are null and void, it
identifies no mechanism for deciding constitutionality or
establishing the principle of precedent and general
applicability. Fernandez noted that some countries have
created a special court of chamber specifically charged with
constitutional interpretation; some, such as France, have
judicial bodies that certify the constitutionality of laws
before they are promulgated. Fernandez called for debate on
this theme and suggested that the Supreme Court might be
specifically designated for this function.

-- He noted that following Hispanic tradition, the Public
Ministry (Ministry of Justice), once representative of the
Crown, is part of the executive branch. Fernandez suggested
discussing whether the Justice Ministry should be independent
of the executive.

-- Debate on the Constitution should include a
re-examination of the rights and responsibilities of
citizens. He suggested that the Constitution might, for
example, recognize the right of a citizen to privacy and to
safeguard of his reputation and provide recourse when those
rights are impugned.

-- &In a constitutional reform in the Dominican Republic it
would be interesting to introduce the concept of an electoral
consultation, a referendum, and even of a recall election,
not only for the head of the executive branch but for any and
all elected representatives of any jurisdiction.⁸

-- Fernandez suggested that congressional representatives
seek to define a mechanism for institutional representation
of the Dominican diaspora.⁸

Reporters busily interviewed other politicians for reaction,
which was featured in newspapers the following day. Some
expressed misgivings about the provisions for electoral
consultations or recall elections, suggesting that these
might cause political instability.

Issue: Including the Military

The greatest stir arose from a press interview with Secretary of the Armed Forces Sigfrido Pared Perez, published the next day. In a comment incidental to the interview, Pared Perez offered his personal opinion that the Constitution should be changed to allow members of the armed forces and the police to vote. Some political figures and commentators subsequently expressed deep concern about that idea, arguing that security forces would become politicized. No one was admitting at the same time that the senior leadership of both institutions has long been adept in exploiting ties to the parties -- for example, Pared Perez himself is the brother of Reynaldo Pared Perez, Secretary General of Fernandez's PLD. Fernandez, an enthusiast for the big picture in any form, demonstrated his eloquence, patriotic concern and mastery of the subject matter, further anchoring his authority as head of state. Bautista and the rest of the congressional leadership have not proposed any timetable for considering specific reforms to the Constitution, and in the end, this conference may serve simply to add to the theoretical literature on constitutional law. And the political unease aroused by proposals that a U.S. observer might consider simple or benign served to remind us that a number of the deciders of Dominican democracy are not entirely at ease with the notion of offering greater electoral voice to the people. Or to the security forces, either.

12. (U) Drafted by Michael Meigs.

13. (U) This piece and others in our series can be consulted at our SIPRNET site
<http://www.state.sgov.gov/p/wha/santodomingo/>
along with extensive other material.
HERTELL